

ENROLLED ORDINANCE 177-42

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF DELAFIELD BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SW ¼ OF SECTION 25, T7N, R18E, TOWN OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN, FROM THE C-1 CONSERVANCY OVERLAY DISTRICT TO THE A-2 RURAL HOME DISTRICT (RZ100)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Delafield Town Board on June 14, 2022; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 59.692, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map for the Town of Delafield, Waukesha County, Wisconsin, adopted by the Waukesha County Board of Supervisors on June 23, 1970, is hereby amended to conditionally rezone from the C-1 Conservancy Overlay District to the A-2 Rural Home District, certain lands located in part of the SW ¼ of Section 25, T7N, R18E, Town of Delafield, and more specifically described in the "Staff Report and Recommendation" and map on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference RZ100, is hereby approved, subject to the following conditions:

1. Subject to documentation being submitted that all required DNR and ACOE permits have been obtained and/or that previous permits are still valid for the two wetland fill areas: one near Sylvan Trail and one to access the proposed residential building location.
2. Subject to the petitioner obtaining a Stormwater Permit from the Land Resources Division for compliance with the erosion control requirements and the site drainage standards.
3. Subject to a Minor Grading Permit, including an existing and proposed grading plan for the driveway, being obtained by Waukesha County Planning and Zoning Division, prior to land altering activities taking place.
4. Subject to there being no more than a 15,000 sq. ft. disturbance area, located south of the "L" shaped portion of the parcel (south of the line with a dimension of 344.64).
5. An approved building envelope for the proposed residence be determined and shown on the Certified Survey Map.

6 A detailed tree inventory/study be completed only within the proposed disturbance envelope area.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town of Delafield Clerk.

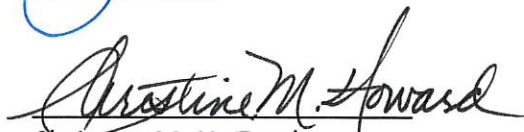
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.


AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE
DISTRICT ZONING MAP OF THE TOWN OF DELAFIELD BY CONDITIONALLY REZONING CERTAIN
LANDS LOCATED IN PART OF THE SW ¼ OF SECTION 25, T7N, R18E, TOWN OF DELAFIELD,
WAUKESHA COUNTY, WISCONSIN, FROM THE C-1 CONSERVANCY OVERLAY DISTRICT
TO THE A-2 RURAL HOME DISTRICT (RZ100)

Presented by:
Land Use, Parks, and Environment Committee


Thomas A. Michalski, Chair


Jennifer Grant



Christine M. Howard


Robert L. Kolb


Brian Meier


Chris Mommaerts

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,
Wisconsin, was presented to the County Executive on:

Date: 8/29/22, 
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County,
Wisconsin, is hereby:

Approved: X

Vetoed:


Date: 8/29/2022, 
Paul Farrow, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance hereby recommends **approval** of **RZ100 (Studer)** in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

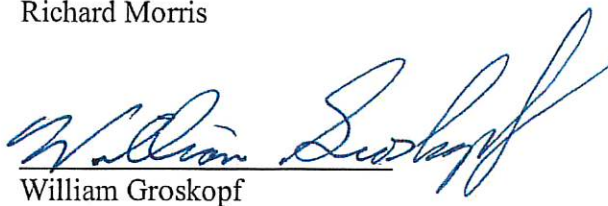
July 21, 2022


James Siepmann, Chairperson


Thomas Michalski, Vice Chairperson


Robert Peregrine

absent
Richard Morris


William Groskopf

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
ZONING MAP AMENDMENT

DATE: July 21, 2022

FILE NO.: RZ100

TAX KEY NO.: DELT 0819.992.001

APPLICANT: Jon Spheeris
175 E. Wisconsin Avenue, Ste. A
Oconomowoc, WI 53066

OWNER: Daniel Studer and Sheyenne Brown Studer
W289 N106 Elmhurst Road
Waukesha, WI 53188-9420

LOCATION:

The property is described as Lot 1, Certified Survey Map (CSM) No. 6889, part of the SW ¼ of Section 25, T7N, R18E, Town of Delafield. More specifically, the property is located at the Elmhurst Road address cited above containing approximately 11.4 acres.

PRESENT ZONING CLASSIFICATION:

C-1 Conservancy Overlay District

PRESENT LAND USE:

Residential

PROPOSED ZONING:

A-2 Rural Home District

PROPOSED LAND USE:

Rezone two small areas equating to 1,359 sq. ft. from the C-1 Conservancy Overlay District to the A-2 Rural Home District to accommodate a residential driveway for a future home site.

PUBLIC HEARING DATE:

June 7, 2022

PUBLIC REACTION:

Keith Kindred, N2W28651 Sylvan Trail. Mr. Kindred stated he made a navigability determination request in 2016, which the Department of Natural Resources (DNR) never completed. In 2018, after observing tree removal and land altering activities on the property, Mr. Kindred again reached out to the DNR for a navigability determination which prompted the DNR to conduct a site visit and determine the pond on Mr. Kindred's property to be navigable. Mr. Kindred indicated that the DNR and County Land Resources Division (LRD) issued permits under false pretenses, after the petitioner relayed that the driveway he was looking to install was over an old road. Mr. Kindred noted that he has not seen any additional flooding as a result of the fill brought onto the property along the east-west portion of the flag lot. However, he noted more flooding was occurring on the north side of the driveway.

Sean Beres, N3W28650 Sylvan Trail. Mr. Beres noted that on the north side of the easement there has been more water in his (wetland) pond, back yard, and the wetland areas on his property since the petitioner conducted the work on the driveway in 2018. He also stated it was previously a deer path on the petitioner's property and not a roadway.

There was also discussion between the neighbors noted above, the petitioner and the Plan Commission regarding potential access issues over the easement strip that they use to access their lands to the north and south of the easement.

TOWN PLAN COMMISSION:

On June 7, 2022, the Town Plan Commission moved to approve the request subject to all required permits from the Army Corps of Engineers (ACOE), DNR and County be obtained and all easement issues appropriately addressed. The motion failed 3-2.

TOWN BOARD ACTION

On June 14, 2022, the Town Board unanimously approved the rezoning request, subject to any easement issues for the surrounding neighbors and that any permits with the DNR and Waukesha County are current and enforced.

COMPLIANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN (CDP) AND THE TOWN OF DELAFIELD LAND USE PLAN:

The Town Land Use Plan and County Comprehensive Development Plan designate the subject parcel mainly as Isolated Natural Resource Area (5 acres/dwelling unit). There is a small area of Suburban Density Residential II (3.0 – 4.9 ac/du) on the western portion of the parcel that abuts to C.T.H. G and is a shared driveway easement. The proposed rezone will accommodate a future residential parcel. Given the existing parcel has more than 10 acres of upland INRA, the proposal complies with both plans.

OTHER CONSIDERATIONS:

The 11.36 acre subject property, platted in 1992, is located east of C.T.H. G and south of I-94 and contains a single family residence. The lands to the west are owned by the Schoenstatt Sisters, who have expressed to the town that they have no plans to develop their land at this time. Rural residential development surrounds the parcel to the north, west and south. Access to the existing home is from C.T.H. G. There is steep topography on the property that slopes west to east. There is Isolated Natural Resource Area on the entire property. There are wetland areas on the east portion of the property. The wetland area on the subject property equates to .85 acres. The DNR determined in 2017 that the wetland pond on the petitioner's property was not navigable, but the pond on the adjacent neighbor's property was navigable.

Subject to the establishment of county zoning being approved on the property (action pending as part of RZ101), this property will be entirely under the jurisdiction of the County's Shoreland and Floodland Protection Ordinance. The proposed zoning districts include A-2 Rural Home, C-1 Conservancy Overlay, HG High Groundwater and EC Environmental Corridor Overlay.

The property owner is requesting a second access to the property from Sylvan Trail in anticipation of a 2-lot land division to construct a single family residence. The construction of a driveway requires the filling of two wetland areas: one near Sylvan Trail, which was completed in 2017, and one further south that would provide access to the building site over the wetland area. These two areas equate to 1,359 sq.

ft. (0.03 acres) of wetland fill (Exhibits A and B). Access from the west (C.T.H. G) is not easily achievable due to the Isolated Natural Resource Area, steep slopes and the restrictions on number of parcels utilizing access easements.

While the property owner made efforts to secure permits prior to conducting any driveway work, there was some uncertainty regarding the town, county and DNR's jurisdictional limits and the wetland boundaries that ultimately halted the project. In late November 2017, a DNR staff member made an onsite determination outside of the growing season that no wetlands existed on the east-west portion of the flag strip and therefore no DNR permits were required for the proposed driveway in this location. The Town Planner questioned this determination as there are DNR mapped wetlands on site. The DNR assured him of their authority to make this call. The Town Planner relayed who to contact at the town to install a culvert from Sylvan Trail and that a Stormwater Permit was required by the Land Resources Division to ensure proper erosion control measures were being taken for the land altering activities surrounding the installation of the driveway. A permit was applied for with the LRD and issued the same day which noted the scope of the permit is to "stone the driveway to the point that is currently cleared along the east property line. If you obtain State approval to cross the wetland to the west, you will be required to submit a new schedule and erosion control plan" and "the first 50 ft. of the driveway from Sylvan Trail must be 3-6 inch diameter clear stone". One week later in December 2017, at the request of an adjacent property owner and the town, the same DNR staff member determined that a wetland pond on the adjacent property located directly south, west and north of the proposed driveway to be navigable, thereby enacting County Shoreland Zoning on the mapped wetland areas immediately, as per the SFPO.

In February 2018, the petitioner obtained a DNR permit to fill 296 sq. ft. of wetlands on the south portion of the flag strip to achieve access to a new home site in February of 2018. The ACOE also issued a permit exemption letter to fill approximately 300 sq. ft. of wetland, subject to standard conditions. The ACOE permit has since expired. It is important to note that both the DNR and ACOE permits reference an area the size of the wetland fill near Sylvan Trail but are permitting fill of the wetland area east of the proposed home site, which is approximately 1,100 sq. ft. In addition, the 2018 wetland delineation determined that wetlands did exist over the east-west area of the flag strip, a portion of which had been filled, as the DNR field staff had indicated no permits were required for this work.

In the 2018 wetland report, SEWRPC notes how a 1970's aerial shows the adjacent subdivision (Sylvan Hills) under construction, with Sylvan Trail, a public road, already installed. The ponds, which are not located within the plat boundary, have also been excavated around the eastern end and northeastern leg of the subject property. Placement of dredged soils around the ponds is evident. A ditch extends eastward from the end of Sylvan Trail that is likely to carry stormwater runoff to a north-south ditch connecting the two ponds.

The C-1 Conservancy Overlay District applies to all areas of wetlands and allows for normal driveway construction in order to provide access to a property provided such facilities are deemed essential or provided that failure of the existing streets, driveways or bridges would endanger public health or safety. In the case of the subject property, access is already available to an existing residential home site that is located outside of the wetland. Accordingly, the request for an alternative access to facilitate a land division requires a rezone from the C-1 wetland area to an upland zoning category. The County LUP designates this property as INRA and as such requires a 5 acre density in order to be divided. The wetland delineation confirms that there is at least 10 acres of upland on the property, which would allow the property owner the opportunity to apply for a minor land division (Certified Survey Map) with the town and the county. The CSM has been submitted to the Town and County for review (Exhibit C) and if

approved will contain a disturbance envelope of no more than 32,670 sq. ft. (3/4 of an acre) in accordance with the SFPO. The proposed parcel is considered a lot not abutting a public road, which requires Town and County Plan Commission approval. This review, along with the CSM review, will also address access concerns relative to existing easements.

STAFF RECOMMENDATION

Based on the above analysis, the Planning and Zoning Division Staff recommends **conditional approval** of the request to rezone approximately .031 acres from the C-1 Conservancy District to the A-2 Rural Home District, subject to the following conditions:

1. Subject to documentation being submitted that all required DNR and ACOE permits have been obtained and/or that previous permits are still valid for the two wetland fill areas: one near Sylvan Trail and one to access the proposed residential building location.
2. Subject to the petitioner obtaining a Stormwater Permit from the Land Resources Division for compliance with the erosion control requirements and the site drainage standards.
3. Subject to a Minor Grading Permit, including an existing and proposed grading plan for the driveway, being obtained by Waukesha County Planning and Zoning Division, prior to land altering activities taking place.

The C-1 Conservancy Overlay District allows for the limited filling and excavating of a wetland to accommodate access to a property that would otherwise not have access. Given the size of the parcel and that more than 10 upland acres of Isolated Natural Resource Area are available, the proposed land division and limited wetland fill seem reasonable and avoids steep slope disturbance and easement issues that would be present if a second alternative access were proposed from the west. The proposed access from Sylvan Trail requires a small amount of wetland fill, some of which has been already completed. While the wetland appears to be man-made, it is still a regulated wetland. As conditioned, new permits, or, at a minimum, a review of previously obtained permits are required from the County, DNR and ACOE to ensure the fill was and is done in accordance with local, state and federal regulations. This would include a review of the site drainage to ensure neighboring properties are not adversely affected by the proposal. As conditioned, the proposal complies with the purpose and intent of the Ordinance and Town and County Land Use Plans.

Respectfully submitted,

Rebekah Leto

Rebekah Leto
Senior Planner

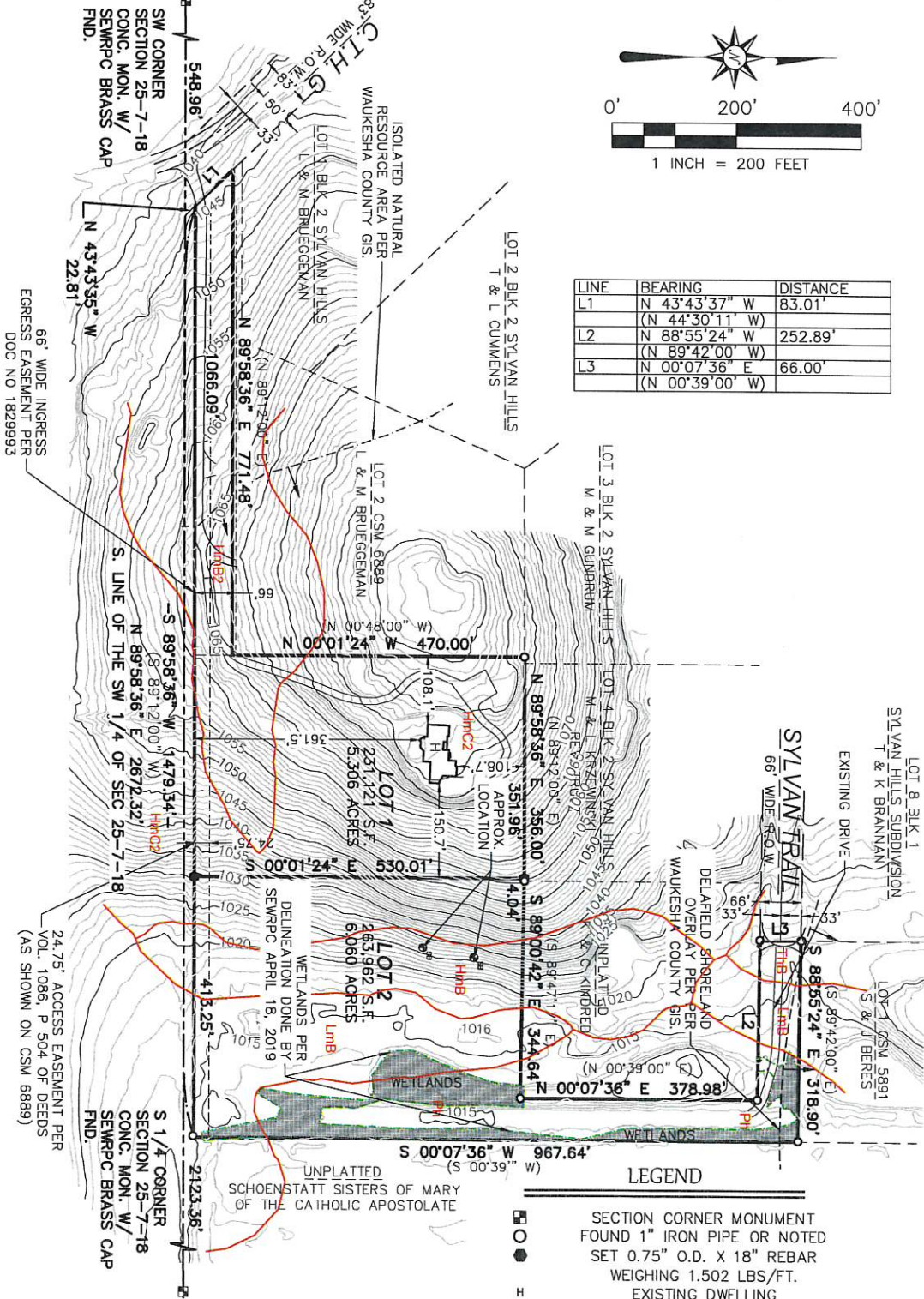
Attachments: Exhibit A & B: Wetland Fill Areas
Exhibit C: Preliminary CSM, Sheet 1
Map

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EXHIBIT C

WAUKESHA CO. CERTIFIED SURVEY MAP NO.

BEING A REDIVISION OF LOT 1 OF CSM 6889, RECORDED IN THE WAUKESHA COUNTY REGISTER OF DEEDS, VOL 57, P372-374, ON OCTOBER 26, 1992, AS DOCUMENT NO 1779007, BEING PART OF THE SW 1/4 AND PART OF THE SE 1/4 OF THE SW 1/4 OF SECTION 25, T7N., R18E., TOWN OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN.



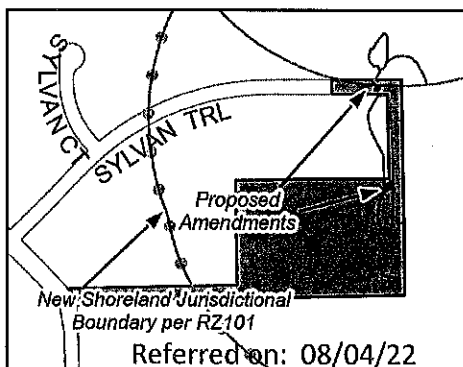
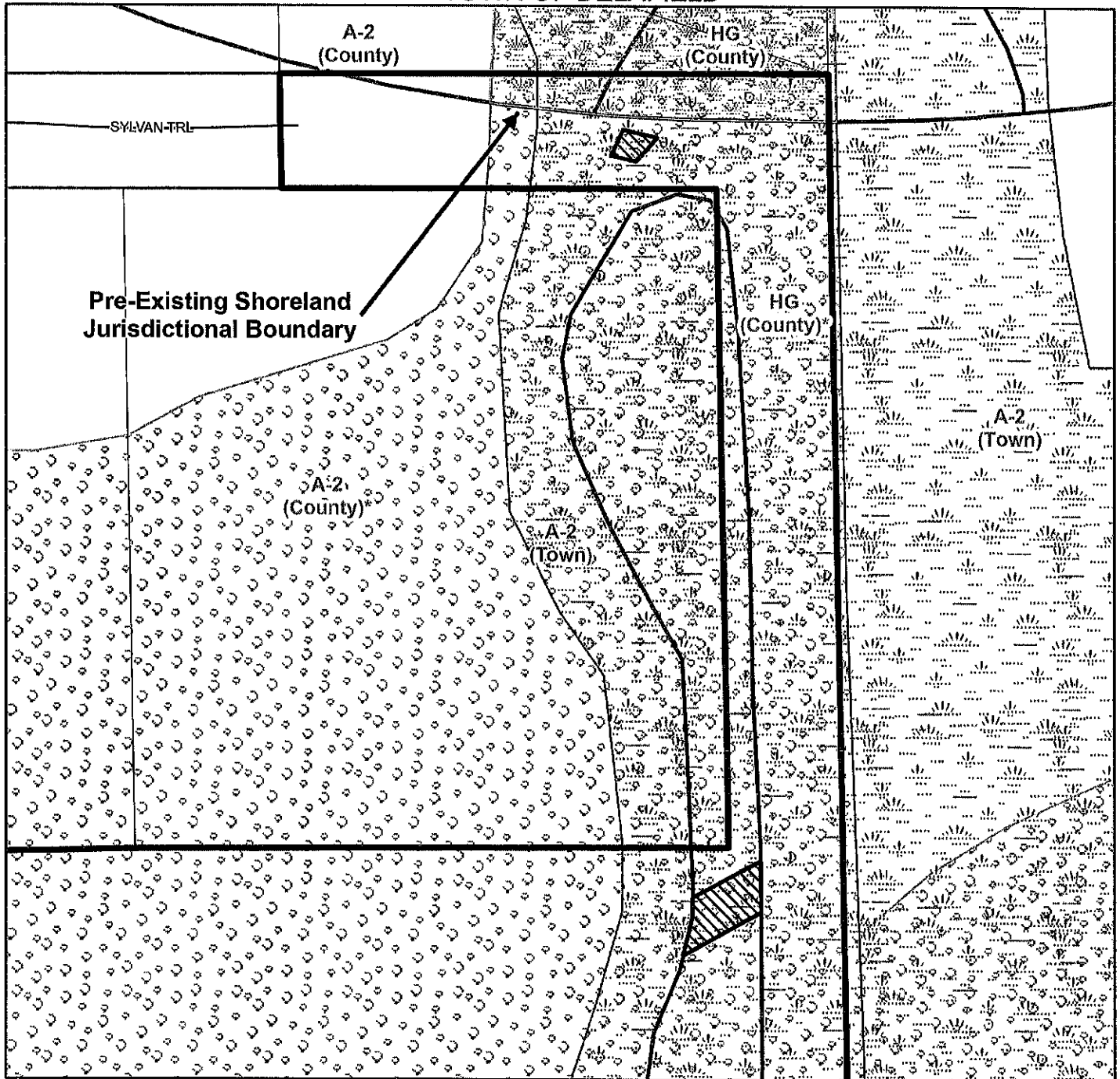
LINE	BEARING	DISTANCE
L1	N 43°43'37" W (N 44°30'11" W)	83.01'
L2	N 88°55'24" W (N 89°42'00" W)	252.89'
L3	N 00°07'36" E (N 00°39'00" W)	66.00'

LEGEND




- SECTION CORNER MONUMENT FOUND 1" IRON PIPE OR NOTED
- SET 0.75" O.D. X 18" REBAR WEIGHING 1.502 LBS/FT.
- H EXISTING DWELLING
- (R) RECORD DIMENSION
- ◆ DRIVEWAY LOCATION
- ⊕ APPROXIMATE SOIL TEST WELL
- ⊙ SEPTIC VENT
- ⊖ SEPTIC CLEANOUT

ZONING AMENDMENT

PT OF THE SW 1/4 OF SECTION 25,
TOWN OF DELAFIELD



Referred on: 08/04/22

	COUNTY ZONING AMENDMENT FROM C-1 CONSERVANCY OVERLAY DISTRICT TO A-2 AGRICULTURAL DISTRICT (0.03 AC)
	CONSERVANCY (C-1) OVERLAY DISTRICT
	ENVIRONMENTAL CORRIDOR (EC) OVERLAY DISTRICT

FILE.....RZ100
 DATE OF PLAN COMMISSION.....7/21/22
 AREA OF CHANGE.....0.03 ACRES
 TAX KEY NUMBER.....DELT 0819.992.001

*RZ101 established the following County Zoning on this property: A-2 Agricultural District, HG High Groundwater District, C-1 Conservancy Overlay District, and EC Environmental Corridor Overlay District

Prepared by the Waukesa County Department of Parks and Land Use
 File Number: 1770044 Referred to: LU 11


0 50 100 Feet

VOTING RESULTS

AYE 23 NAY 0 ABSTAIN 0 ABSENT 2

Ordinance 177-O-044

Ordinance 177-O-044: Amend the Waukesha County S...

 **Passed By Majority Vote**

D1 - Foti	AYE	D14 - Mommaerts	AYE
D2 - Weil	AYE	D15 - Kolb	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Meier	AYE
D5 - Grant	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Enriquez	AYE
D7 - LaFontain	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	ABSENT	D22 - Vacant	ABSENT
D10 - Thieme	AYE	D23 - Hammitt	AYE
D11 - Howard	AYE	D24 - Bangs	AYE
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		

August 23 2022 - August 23 2022 07:05:17 PM

